IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Writ Petition No.501 of 2007 (M/B)

1. Sandeep Goswami s/o Prem Giri Goswami,
   R/o Lohareyashal Malla Post Office, Katgharia,
   P.S. and Tehsil Haldwani, District Nainital.
2. smt. Kamla Goswami W/O Prem Giri Goswami
   r/o Lohareyashal Malla Post Office, Katgharia,
   District Nainital …….. Petitioners

Versus

The nainital bank ltd. Branch M.B.P.G. Campus, Haldwani, District Nainital through its Branch Manager

……. Respondent

……..

Sri. S.S.Negi, Advocate for the petitioners.
Sri Anil Kumar Joshi, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri. S.S.Negi, Advocate for the petitioners.

Sri Anil Kumar Joshi, Advocate for the respondent.

They are heard on admission.

2. The petitioners have filed this writ petition for the following reliefs:

"I. Issue a writ, order or direction in the nature of mandamus commanding the respondent bank to make 12 quarterly instalments of rest amount due on petitioner no. 1 namely, Rs. 1,32,524/-.

II. Issue a writ, order or direction in the nature of mandamus commanding the respondent Bank not to attach, auction or sale under Annexure no. 2 of this writ petition and not to use coercive methods to immovable property of petitioner no. 2 who has made simple mortgage to the respondent bank costing Rs. 18,00,000/- during the pendency of writ petition while the petitioner no. 1 is ready and willing to deposit the rest amount of Rs. 1,32,524/- in 12 quarterly instalments to the respondent bank.

III. Issue a suitable writ or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

IV. Award the cost of the petition from the respondent to the petitioners."

3. Admittedly, the petitioners have taken loan from respondent Nainital Bank Ltd. and some loan amount remains unpaid. The respondent Bank appears to have taken steps U/s 13 of the Secrutisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.

4. The petitioners, through are claiming only the relief of 12 quarterly instalments to repay the balance amount, in fact, they are challenging the proceedings taken by the respondent Bank U/s 13 of the Act.

5. In view of the dictum of the apex Court in the case of **Mardia Chemicals Ltd. and others Vs. Union of India and others** reported in **(2004) 4 SCC 311,** the writ petition challenging the proceedings U/s 13 of the Act is not maintainable at all.

6. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S. Rawat, J.) **(Raveej Gupta, C.J.)**
09.05.2007 09.05.2007

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